

Julian Assange and WikiLeaks: A Case Study in the Criminalisation of Dissent

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For hundreds of years, in order to promote civil liberties, such as free speech and a free press, courageous dissenters have challenged governments and other powerful institutions. They have spoken truth to power.

In many countries, those civil liberties are now threatened by the war on terror and the associated legislation which has increased police powers and the numbers of invisible and unaccountable secret service personnel responsible for a country's security (Council of Europe, 2011, Head, 2011, Herman, 2011). Freedoms fought for in the 18th century are being eroded in the 21st.

In this account of challenges to state power, I will focus on the activities of the media organization Wikileaks and its founder Julian Assange. My argument is that something odd is going on, Assange continues to be vilified and threatened not because he engaged in violent and evil acts but because he exposed them. I also want to pay tribute to some of his illustrious predecessors and also to demonstrate that while some states criminalise dissent, others befriend and defend our popular heroes, past and present. The paper draws on, and develops some of my previous work in this area (Rees, 2011, 2012).

WikiLeaks: Some of the Precedents

In 1702, Daniel Defoe, political satirist and author of such famous novels as *Moll Flanders* and *Robinson Crusoe*, challenged a UK parliamentary bill that jeopardised the jobs of Nonconformists, threatening them with hefty fines. Defoe responded to the Bill by writing, *The Shortest-Way with the Dissenters; Or, Proposals for the Establishment of the Church* a hoax in the guise of a High Church official proposing to suppress non conformity by executing the dissidents.

Most officials said that Defoe's pamphlet had gone too far and a warrant was issued for his arrest. Defoe was charged with seditious libel. He was tried and sentenced to punitively hefty fines, imprisonment and to three days in the pillory by the notoriously corrupt and sadistic Judge Salathiel Lovell (Adams, 2012:iii). In Newgate prison he wrote the long satirical poem *Hymn to the Pillory* which contains the lines,

*Extol the justice of the land,
Who punish what they will not understand.
Tell them he stands exalted there
For speaking what they would not hear.* (Dafoe, 1703:604)

Legend has it that the publication of the poem and its sale as a pamphlet caused the pillory to backfire. Rather than humiliating him, the audience drank to his health and threw flowers instead of the customary harmful and noxious objects (Dafoe, 2009). This reversal is a frequent phenomena that Foucault has observed “what the violence of order had driven away would overthrow that order and bring liberty on its return.” (Foucault, 1977: 262)

Tom Paine’s experience is similar. In 1792, following the publication of Paine’s *The Rights of Man*, government ministers established a grand jury to inquire into threats posed by Paine’s writings. He was charged with sedition, a trial date was set and Paine fled to France. In response to the publication of *The Rights of Man*, British Ministers used the same types of arguments about ‘the protection of national security’ that have energised widespread debate about Julian Assange.

Paine (1791) had written that the preservers of government secrecy considered “Government as a thing made up of mysteries, which only themselves understood.” In a commentary called *Ways and Means of Improving the Conditions of Europe*, Paine (1791) claimed, “Every Ministry acts upon the same idea... namely that people must be hoodwinked and held in superstitious ignorance by some bugbear or other.”

Ministers argued for a suspension of *habeas corpus* on the grounds that challenges to government showed that “a dangerous and treasonable conspiracy existed.” (Campbell, 1807:68). In the words of a Paine supporter, the supposed conspiracy was subsequently shown to be “a mere fabrication of ministers who had exercised an illegal influence over the grand jury, that found the indictment against the parties accused.” (Campbell, 1807:68).

In the USA in June 1971 the controversy over Daniel Ellsberg and the publication of *The Pentagon Papers* began (Ellsberg, 2003). Former marine and military analyst Daniel Ellsberg released secret documents about the conduct of the Vietnam War, including the revelation that top Pentagon officials thought that the war could not be won and that there would be many more casualties.

Ellsberg was charged with theft, conspiracy and espionage. In an effort to demonize him and even to have him killed, Nixon staff broke into Ellsberg’s psychiatrist’s office and several dozen Cuban commandoes were flown to Washington with orders to assassinate Ellsberg. They are reported to have backed down because when the opportunity to kill arose, the crowd was too large. On account of gross government misconduct, all the charges against Ellsberg were eventually dropped and in relation to the case, the US Supreme Court insisted, “Only free and unrestrained press can effectively expose deception in government.” (Justice Black in *New York Times Co. V. United States*, 403 U.S. 713 (1971)).

In December 2010, in relation to his defence of Julian Assange, Daniel Ellsberg recalled, “I was the first one prosecuted for the charges that would be brought against him.” In his

commentary on the arrest and confinement of US serviceman Bradley Manning, who has allegedly leaked thousands of classified documents, Ellsberg says, “If Bradley Manning did what he’s accused of, then he’s a hero of mine and I think he did great service to this country.... I say there should be some secrets, But I also say we invaded Iraq illegally because of the lack of a Bradley Manning at that time.” (Ellsberg, in Goodman, 2010). Furthermore, Ellsberg expressed concern for the lives of Julian Assange and Bradley Manning (Council of Europe, 2011)

Fast forward to August 2012. Australian whistle blower, journalist Julian Assange has taken refuge in the Ecuadorian Embassy in London, not because he is wanted in Sweden for questioning about alleged sex offences but because he has been telling inconvenient truths about Big Brother who he fears, with ample justification, will extradite him from Sweden to the USA for his activities in Wikileaks.

Yet a 2006 statement conveys the purpose of Wikileaks: ‘The goal is justice. The method is transparency.’ (Pilger, 2010) Consistent with such a goal, the thousands of Wikileaks revelations have challenged US governments and their allies and they have reacted angrily, their reaction has been principally focused on the criminalization of dissent.

State power and attempts to stifle dissent

In March 2008, after the release of US embassy cables, the Pentagon’s Cyber Counter Intelligence Assessments Branch said it planned to destroy the feeling of trust in Wikileaks and would do so by threatening Assange with exposure and criminal prosecution (Pilger, 2011).

Following Wikileaks’ release in 2008, of a quarter of a million cables concerning the conduct of the Iraq and Afghan wars and the subsequent broadcasting of the video ‘collateral damage’, which showed the murder by US marines from a helicopter of a dozen adults and serious injuries to two children in the streets of Baghdad, US Presidential candidate Mike Huckabee said that people such as Assange were guilty of treason and that “anything less than execution was too kind a penalty.” (Siddique, & Weaver, 2010). Sarah Palin recommended that Assange be hunted down like Bin Laden (Nicholls, 2010) and a panelist on America’s Fox News said that although he knew it was illegal, he would encourage “anyone out there with a gun to shoot the son of a bitch.” (Fowler, & Harley, 2012).

The idea that bullying is an appropriate form of diplomacy has also been evident in reactions by the UK state towards the Ecuador’s granting of asylum to Assange. The UK government said they were entitled to invade the Ecuadorian Embassy in order to arrest him (Pearse, 2012). Foreign Minister William Hague posited a legal obligation regarding the dispatch of Assange to Sweden (PA/ Huffington Post, 2012) – and placed large numbers of police outside the embassy.

A widespread smear campaign was launched to accuse President Correa of Ecuador of not practicing what he preached in terms of supporting freedom of the press, but as

Weisbrot (2010, 2012a, 2012b) has demonstrated, the issues are far more nuanced. As a private citizen the president is entitled to sue for defamation and did so. Responding in interview, President Correa also critiqued the role of media monopolization in opposing social justice to promote sectional interests and astutely quipped that, if there is no freedom of speech in Ecuador, how could they communicate the idea that there is no freedom of speech (RT, 2012a).

Not to be outdone by its powerful neighbor, Sweden reprimanded the Ecuadorian Ambassador in Stockholm (Rees, 2012) although Ecuador was not questioning the Swedish justice system in the investigation of possible sex charges against Assange but rather their failure to guarantee Assange's safety if the US wanted him extradited to the US.

The assumption persisted that powerful countries in alliance with the US must know more about the rule of law than a South American republic. In an ethical stance that others could do well to emulate, Ricardo Patino, The Ecuadorian Ambassador responded by regarding the threats as "an assault on our national sovereignty". Heroically she asserted:

"we may be a small country but we are giants in terms of dignity and our own right to sovereignty. No country can be treated in this manner as if it were a mere colony, that history has long gone." (in Millar, 2012).

In contrast to this inspiring stance by Ecuador, other governments can be roundly criticized for failing to appropriately protect and support their citizens who engage in dissent. In response to threats in the media to have Assange killed, government and opposition politicians in Australia stayed silent, as they had done for over five years when the Australian citizens David Hicks and Mahmdoub Habib, were imprisoned in Guantanamo Bay. If the US was involved, the Human Rights of Australian citizens counted for nothing.

There continues to be one rule for the powerful and another for those who challenge them. Powerful governments and their representatives engage in unjust wars but their leaders – such as former President Bush, former UK Prime Minister Blair and former Australian Prime Minister Howard – are never brought to account.

Assange has repeatedly stated that he is prepared to be questioned about the Swedish allegations, from within the Ecuadorian Embassy, but that he is concerned that should he travel to Sweden, he risks being extradited to America. There are two sides to the argument concerning the risk of extradition to the US. Argument claiming a risk of extradition may draw on declassified diplomatic cables, released under freedom of information legislation, revealed in the *Sydney Morning Herald*, which show that a criminal investigation into Mr Assange has been underway for more than a year (Dorling, 2012). A grand jury had been sitting in Virginia the object of which "is to indict Julian Assange under a discredited espionage act used to arrest peace activists during the first world war, or one of the "war on terror" conspiracy statutes that have degraded American

justice.” (Pilger, 2011). The diplomatic cables showed that ‘the Australian government considers the prospect of extradition sufficiently likely that, on direction from Canberra, Mr Beazley sought high level US advice on “the direction and likely outcome of the investigation” and “reiterated our request for early advice of any decision to indict or seek extradition of Mr Assange”. (Dorling, 2012). These cables also showed that the Australian government “had no objection in principle to the extradition of Assange to the United States.” (Dorling, 2012).

Argument against the risk of extradition points out that according to the Convention on Extradition between the United States and Sweden., “extradition will be refused for "political offences" or where the suspect has reason to fear persecution on account of their membership of a social group or political beliefs. The treaty also specifies the offences which qualify for extradition, and espionage is not one of them” (Walker, 2012).

Nevertheless, amidst the controversy, Assange along with Bradley Manning, has joined an impressive history of English speaking dissenters. The same punitive themes resonate over the centuries. The pillory for Defoe, grand juries for Paine, Ellsberg and Assange and years of solitary confinement plus the prospect of long prison sentence for the supposed key whistle blower Bradley Manning; the criminalization of dissent.

Yet governments continue to defend secret and violent conduct by parading a convenient Orwellian paradox: we will defend civil liberties by insisting that in future these liberties are a luxury which even democracies can no longer afford. As if confirming Tom Paine’s analysis, they assume that their work is so complex and mysterious that ordinary citizens need not know about it and in any case would not understand.

The people supporting Julian Assange fully comprehend the significance of his activities. They know that civil liberties must be stoutly defended. They are not a small minority, “All the members of the Organization of American States, except for the US and Canada, have stated their solidarity and support of Ecuador’s decision to grant asylum to Julian Assange at a meeting of 35-member bloc in Washington.” (RT, 2012b). and the accolades on Assange continue to unfurl. He gains the most votes for Time Magazine’s person of the year (Friedman, 2010). He is awarded the Martha Gellhorn prize for Journalism (Deans, 2011). He addresses the United Nations, beamed by satellite from within the Ecuadorian Embassy (AAP, 2012).

One of the western world’s most effective advocates of Human Rights has also explained the significance of Wikileaks and Julian Assange. In May 2011, on my way to London to present Assange with the Sydney Peace Foundation’s gold medal for advocacy of Human Rights’, I spent time with Professor Noam Chomsky in Boston. He penned the following message for Julian Assange: “I would like to thank you for fulfilling your responsibilities as a member of free societies who have every right to know what their government is doing.”

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